Supreme Court, U.S.
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No. ____

In The Supreme Court of the United States

MATTHEW SMITH,

Petitioner,

v.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTION PRESENTED

1. Were petitioner's rights under the Sixth and Fourteenth Amendments of the United States Constitution violated by the New York Court of Appeals' finding of a knowing and intelligent waiver of a jury trial from a silent record wherein the trial court never addressed petitioner regarding his understanding of the waiver and, indeed, petitioner never even spoke?

PARTIES TO THE PROCEEDING

Matthew Smith,

Petitioner.

The People of the State of New York,

Respondents.

PARENT AND SUBSIDIARY COMPANIES

Petitioner is an individual. Parent and subsidiary companies are not involved in this case.

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OPINIONS AND ORDERS BELOW

The memorandum opinion of the New York State Supreme Court, Appellate Division, Fourth Judicial Department, affirming petitioner's conviction is published at 16 A.D.3d 1033, 790 N.Y.S.2d 805. The decision of the Court of Appeals of the State of New York affirming the judgment of the Appellate Division has not yet been published in the official reporter, but it is available at 2006 WL 796983 (2006 N.Y. Slip Op. 02408).

JURISDICTION OF THIS COURT

The order of the New York State Supreme Court, Appellate Division, Fourth Judicial Department, affirming the judgment of petitioner's conviction of rape in the first degree and burglary in the second degree after a bench trial was entered March 18, 2005. The New York State Court of Appeals entered an order on March 30, 2006, affirming the decision of the Appellate Division.

The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. § 1257 and Rules 10 (b), 10(c), and 13 of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

United States Constitution, Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment XIV, Section 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.